

AMENDED IN ASSEMBLY APRIL 16, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1780

Introduced by Assembly Member Murray

February 6, 1998

An act to amend ~~Section~~ *Sections 15610.63 and 15630* of the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1780, as amended, Murray. Elder abuse: reporting requirements.

Existing law defines physical abuse for purposes of reporting elder and dependent adult abuse.

This bill would expand that definition, as specified.

Existing law requires any mandated reporter, as defined, who observes in his or her professional capacity, or within the scope of his or her employment, an instance of physical abuse against an elder or dependent adult, to report the abuse under specified circumstances. The report must be made to the local ombudsman or to a local law enforcement agency if the abuse has occurred in a long-term care facility, except as specified. Failure to make a required report is punishable as a misdemeanor.

This bill would *expand the definition of mandated reporter, as specified, would* delete the specified circumstances under which the above report is required to be made, and would instead require that a report be made when the mandated reporter ~~knows or~~ reasonably suspects that the elder or

~~dependent adult has been the victim of suffered physical abuse, abandonment, isolation, financial abuse, or neglect. The bill would also expand this reporting duty to include the neglect of an elder or dependent adult. Additionally, the bill would add the Bureau of Medi-Cal Fraud to the list of specified agencies to whom a report may be made concerning abuse and neglect in a long-term care facility. The bill would require that, except in emergency situations, if the abuse or neglect occurred in a long-term care facility, the report must be made first to the Bureau of Medi-Cal Fraud. The bill would also increase the penalty for failure to report in specified circumstances.~~ Because this bill would expand the definition of, and penalties for, a crime and increase the reporting duties of local officials, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. *Section 15610.63 of the Welfare and*
- 2 *Institutions Code is amended to read:*



1 15610.63. “Physical abuse” means any of the
2 following:

3 (a) Assault, as defined in Section 240 of the Penal
4 Code.

5 (b) Battery, as defined in Section 242 of the Penal
6 Code.

7 (c) Assault with a deadly weapon or force likely to
8 produce great bodily injury, as defined in Section 245 of
9 the Penal Code.

10 (d) Unreasonable physical constraint,~~or~~ prolonged or
11 continual deprivation of food or water; *or the intentional*
12 *failure of a caregiver to provide the care and services*
13 *necessary to maintain the physical health of an elder or*
14 *dependent adult where such failure presents a substantial*
15 *probability that death or great bodily injury would result.*

16 (e) Sexual assault, that means any of the following:

17 (1) Sexual battery, as defined in Section 243.4 of the
18 Penal Code.

19 (2) Rape, as defined in Section 261 of the Penal Code.

20 (3) Rape in concert, as described in Section 264.1 of the
21 Penal Code.

22 (4) Spousal rape, as defined in Section 262 of the Penal
23 Code.

24 (5) Incest, as defined in Section 285 of the Penal Code.

25 (6) Sodomy, as defined in Section 286 of the Penal
26 Code.

27 (7) Oral copulation, as defined in Section 288a of the
28 Penal Code.

29 (8) Penetration of a genital or anal opening by a
30 foreign object, as defined in Section 289 of the Penal
31 Code.

32 (f) Use of a physical or chemical restraint or
33 psychotropic medication under any of the following
34 conditions:

35 (1) For punishment.

36 (2) For a period beyond that for which the medication
37 was ordered pursuant to the instructions of a physician
38 and surgeon licensed in the State of California, who is
39 providing medical care to the elder or dependent adult
40 at the time the instructions are given.

1 (3) For any purpose not authorized by the physician
2 and surgeon.

3 *SEC. 2.* Section 15630 of the Welfare and Institutions
4 Code is amended to read:

5 ~~15630. (a) Any elder or dependent adult care~~
6 ~~custodian, health practitioner, or employee of a county~~
7 ~~adult protective services agency or a local law~~
8 ~~enforcement agency is a mandated reporter.~~

9 ~~(b) Any mandated reporter, who, in his or her~~
10 ~~professional capacity, or within the scope of his or her~~
11 ~~employment, has knowledge of, or observes an elder or~~
12 ~~dependent adult, whom he or she knows or reasonably~~
13 ~~suspects has been the victim of physical abuse or neglect,~~
14 ~~shall report the known or suspected instance of abuse by~~
15 ~~telephone immediately or as soon as possible, and by~~
16 ~~written report sent within two working days, as follows:~~

17 ~~(1) If the physical abuse or neglect has occurred in a~~
18 ~~long-term care facility, except a state mental health~~
19 ~~hospital or a state developmental center, the report shall~~
20 ~~be made to the Bureau of Medi-Cal Fraud, local~~
21 ~~ombudsman, or the local law enforcement agency.~~
22 ~~Except in emergency situations, the report shall be made~~
23 ~~first to the Bureau of Medi-Cal Fraud.~~

24 ~~(2) If the suspected or alleged physical abuse or~~
25 ~~neglect occurred in a state mental health hospital or a~~
26 ~~state developmental center, the report shall be made to~~
27 ~~designated investigators of the State Department of~~
28 ~~Mental Health or the State Department of~~
29 ~~Developmental Services or to the local law enforcement~~
30 ~~agency.~~

31 ~~(3) If the physical abuse or neglect has occurred any~~
32 ~~place other than one described in paragraph (1), the~~
33 ~~report shall be made to the adult protective services~~
34 ~~agency or the local law enforcement agency.~~

35 ~~(e) (1) Any mandated reporter who has knowledge~~
36 ~~of, or reasonably suspects that, types of elder or~~
37 ~~dependent adult physical abuse or neglect for which~~
38 ~~reports are not mandated have been inflicted upon an~~
39 ~~elder or dependent adult or that his or her emotional~~

1 ~~well-being is endangered in any other way, may report~~
2 ~~the known or suspected instance of abuse.~~

3 ~~(2) If the suspected or alleged physical abuse or~~
4 ~~neglect occurred in a long-term care facility other than~~
5 ~~a state mental health hospital or a state developmental~~
6 ~~center, the report may be made to the long-term care~~
7 ~~ombudsman program.~~

8 ~~(3) If the suspected or alleged physical abuse or~~
9 ~~neglect occurred in a state mental health hospital or a~~
10 ~~state developmental center, the report may be made to~~
11 ~~the designated investigator of the State Department of~~
12 ~~Mental Health or the State Department of~~
13 ~~Developmental Services, or to a local law enforcement~~
14 ~~agency or to the local ombudsman.~~

15 ~~(4) If the suspected or alleged physical abuse or~~
16 ~~neglect occurred anywhere else, the report may be made~~
17 ~~to the county adult protective services agency.~~

18 ~~(5) If the conduct involves criminal activity not~~
19 ~~covered in subdivision (b), it may be immediately~~
20 ~~reported to the appropriate law enforcement agency.~~

21 *15630. (a) Any person who has assumed full or*
22 *intermittent responsibility for care or custody of an elder*
23 *or dependent adult, whether or not that person receives*
24 *compensation, including administrators, supervisors, and*
25 *any licensed staff of a public or private facility that*
26 *provides care or services for elder or dependent adults,*
27 *or, any health practitioner, or employee of a county adult*
28 *protective services agency or a local law enforcement*
29 *agency is a mandated reporter.*

30 *(b) Any mandated reporter, who, in his or her*
31 *professional capacity, or within the scope of his or her*
32 *employment, has observed or has knowledge of an*
33 *incident that reasonably appears to be physical abuse,*
34 *observed a physical injury where the nature of the injury,*
35 *its location on the body, or the repetition of the injury,*
36 *clearly indicates that physical abuse has occurred, or that*
37 *abandonment, isolation, financial abuse, or neglect has*
38 *occurred, or is told by an elder or dependent adult that*
39 *he or she has experienced behavior constituting physical*
40 *abuse, abandonment, isolation, financial abuse, or*

1 neglect, or reasonably suspects abuse shall report the
2 known or suspected instance of abuse by telephone
3 immediately or as soon as practically possible, and by
4 written report sent within two working days, as follows:

5 (1) If the abuse has occurred in a long-term care
6 facility, except a state mental health hospital or a state
7 developmental center, the report shall be made to the
8 local ombudsman or the local law enforcement agency.
9 Except in an emergency, the local ombudsman shall
10 report any case of possible criminal activity or criminal
11 neglect as soon as is practical to the Bureau of Medi-Cal
12 Fraud. Cases reported to local law enforcement shall also
13 be reported to the Bureau of Medi-Cal Fraud.

14 (2) If the suspected or alleged abuse occurred in a
15 state mental health hospital or a state developmental
16 center, the report shall be made to designated
17 investigators of the State Department of Mental Health
18 or the State Department of Developmental Services or to
19 the local law enforcement agency.

20 (3) If the abuse has occurred any place other than one
21 described in paragraph (1), the report shall be made to
22 the adult protective services agency or the local law
23 enforcement agency.

24 (c) (1) Any mandated reporter who has knowledge
25 of, or reasonably suspects that, types of elder or
26 dependent adult abuse for which reports are not
27 mandated have been inflicted upon an elder or
28 dependent adult or that his or her emotional well-being
29 is endangered in any other way, may report the known or
30 suspected instance of abuse.

31 (2) If the suspected or alleged abuse occurred in a
32 long-term care facility other than a state mental health
33 hospital or a state developmental center, the report may
34 be made to the long-term care ombudsman program.

35 (3) If the suspected or alleged abuse occurred in a
36 state mental health hospital or a state developmental
37 center, the report may be made to the designated
38 investigator of the State Department of Mental Health or
39 the State Department of Developmental Services, or to

1 a local law enforcement agency or to the local
2 ombudsman.

3 (4) If the suspected or alleged abuse occurred
4 anywhere else, the report may be made to the county
5 adult protective services agency.

6 (5) If the conduct involves criminal activity not
7 covered in subdivision (b), it may be immediately
8 reported to the appropriate law enforcement agency.

9 (d) When two or more mandated reporters are
10 present and jointly have knowledge or reasonably suspect
11 that types of abuse of an elder or a dependent adult for
12 which a report is or is not mandated have occurred, and
13 when there is agreement among them, the telephone
14 report may be made by a member of the team selected
15 by mutual agreement, and a single report may be made
16 and signed by the selected member of the reporting
17 team. Any member who has knowledge that the member
18 designated to report has failed to do so shall thereafter
19 make the report.

20 (e) A telephone report of a known or suspected
21 instance of elder or dependent adult abuse shall include
22 the name of the person making the report, the name and
23 age of the elder or dependent adult, the present location
24 of the elder or dependent adult, the names and addresses
25 of family members or any other person responsible for the
26 elder or dependent adult's care, if known, the nature and
27 extent of the elder or dependent adult's condition, the
28 date of the incident, and any other information, including
29 information that led that person to suspect elder or
30 dependent adult abuse requested by the agency
31 receiving the report.

32 (f) The reporting duties under this section are
33 individual, and no supervisor or administrator shall
34 impede or inhibit the reporting duties, and no person
35 making the report shall be subject to any sanction for
36 making the report. However, internal procedures to
37 facilitate reporting, ensure confidentiality, and apprise
38 supervisors and administrators of reports may be
39 established, provided they are not inconsistent with this
40 chapter.

(g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that law enforcement agency.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

~~(h) Failure to report physical abuse or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in the county jail or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment.~~

(h) Failure to report physical abuse of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in a county jail or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report physical abuse of an elder or dependent adult, in violation of this section, where that abuse results in death or great bodily injury, may be punishable by not more than one year in a county jail or by a fine of not more than five thousand dollars (\$5,000) or imprisonment in the state prison.

~~SEC. 2.~~

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the

1 state, reimbursement to local agencies and school
2 districts for those costs shall be made pursuant to Part 7
3 (commencing with Section 17500) of Division 4 of Title
4 2 of the Government Code. If the statewide cost of the
5 claim for reimbursement does not exceed one million
6 dollars (\$1,000,000), reimbursement shall be made from
7 the State Mandates Claims Fund.

8 Moreover, no reimbursement is required by this act
9 pursuant to Section 6 of Article XIII B of the California
10 Constitution because the only costs that may be incurred
11 by a local agency or school district will be incurred
12 because this act creates a new crime or infraction,
13 eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section
15 17556 of the Government Code, or changes the definition
16 of a crime within the meaning of Section 6 of Article
17 XIII B of the California Constitution.

18 Notwithstanding Section 17580 of the Government
19 Code, unless otherwise specified, the provisions of this act
20 shall become operative on the same date that the act
21 takes effect pursuant to the California Constitution.

